Supreme Court, U.S.
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NO. 90-1765

IN THE

Supreme Court of the United States

_____ TERM, 1991

RICHARD HAROLD HOLEMAN,
Petitioner

v.

JUDGE BILL ELLIOTT,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

QUESTION 1

DOES IT VIOLATE FIRST AND FOURTEENTH AMENDMENT RIGHTS FOR A STATE JUDGE TO HOLD EX PARTE PROCEEDINGS IN A PENDING CASE?

[Right To Petition, Due Process Requirements, Liberty and Property Rights].

QUESTION 2

DID THE TRIAL COURT ERR IN DISMISSING PETITIONER'S PRO SE COMPLAINT, WITHOUT AFFORDING PETITIONER AN OPPORTUNITY TO AMEND?

QUESTION 3

MAY A STATE JUDGE BE SUED FOR INJUNCTIVE RELIEF UNDER TITLE 42 U.S.C. SECTION 1983 IF HE HOLDS EX PARTE PROCEEDINGS DURING THE COURSE OF A CASE?

QUESTION 4

MAY A STATE JUDGE BE SUED FOR DAMAGES IF HE ACTS AGAINST A PARTY, WHEN BY STATE LAW, HE IS DEVOID OF ANY JURISDICTION AS A JUDGE?

QUESTION 5

EVEN IF THERE IS AN ABSTENTION DOCTRINE IN FEDERAL COURT RELATING TO DOMESTIC RELATIONS CASES, MAY THE FEDERAL COURT ABSTAIN FROM GRANTING RELIEF FOR VIOLATIONS OF CIVIL AND CONSTITUTIONAL RIGHTS DURING THE COURSE OF A CASE DIVORCE CASE WHEN THERE IS NO OTHER FORUM IN WHICH TO LITIGATE THE CLAIMS?

QUESTION 6

WAS PETITIONER DENIED A FAIR AND IMPARTIAL JUDGE IN VIOLATION OF THE FOURTEENTH AMENDMENT?

PARTIES BELOW

The following persons were parties to the proceeding, or were attempted to be made parties to the proceeding, in the United States District Court for the Southern District of Texas, Houston Division, the court whose judgment is sought to be reviewed:

Richard Harold Holeman

Judge Bill Elliott, Judge of the 311th Judicial District Court of Harris County, Texas

Michael A. Stocker

Anne Shirley Holeman

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NO._____

IN THE

Supreme Court of the United States

October Term, 1990

RICHARD HAROLD HOLEMAN,
Petitioner,

v.

JUDGE BILL ELLIOTT,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Honorable Chief Justice of the United States, and to the Associate Justices of the United States Supreme Court:

Petitioner, Richard Harold Holeman, files this Petition for Writ of Certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit which affirmed the decision of the United States District Court for the Southern District of Texas, Houston Division, Judge David Hittner, dismissing Petitioner's pro se suit against Respondent, Judge Bill Elliott, alleging violation of First Amendment rights and seeking injunctive relief under Title 42 U.S.C. Section 1983 against Judge Bill Elliott for his having held ex parte proceedings during the course of Petitioner's divorce case.

OPINIONS BELOW

A copy of the order of the Fifth Circuit Court of Appeals is attached as Appendix A. A copy of the order of the United States District Court for the Southern District of Texas is attached as Appendix B. A copy of Petitioner's original complaint is attached as Appendix D. A copy of Petitioner's Motion to Amend is attached as Appendix E.

JURISDICTION

This is a civil appeal from the decision of the Fifth Circuit Court of Appeals, entered on February 20, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1). The District Court had jurisdiction of the original case pursuant to the provisions of Title 28 U.S.C. Section 1331.

STATUTES INVOLVED

Respondent, Judge Bill Elliott, lost all jurisdiction of the state court case pursuant to the provisions of Rule 18a(c), Tex. R. Civ. P., which is set forth in Appendix N.

Petitioner sued Respondent under the provisions of Title 42 U.S.C. Section 1983, which is set forth in Appendix F.

STATEMENT OF THE CASE

Richard Harold Holeman was the pro se Petitioner in the case styled **IN THE MATTER OF THE MARRIAGE OF RICHARD HAROLD HOLEMAN AND ANNE SHIRLEY HOLEMAN**, Cause No. 85-39003, in the 311th District Court of Harris County. Respondent, Judge Bill Elliott, is and has been at all times relevant to this case, the duly elected judge of the 311th Judicial District Court of Harris County, Texas.

Petitioner's divorce case was filed in mid-1985. By 1987, due to the protracted nature of the case, Petitioner was unable to continue to

afford retained counsel and was forced to proceed in **propia persona**. After Petitioner began representing himself, Respondent, Judge Bill Elliott began having ex parte contacts with Michael A. Stocker ("Stocker"), the attorney who was representing Petitioner's wife in the divorce case.

On December 17, 1987, Petitioner, who was then appearing pro se, appeared for a contested hearing in the 311th Judicial District Court, which hearing was held before the Master of the 311th Judicial District Court. As a result of that hearing, the Master of the 311th Judicial District Court entered recommendations terminating all prior orders of support, visitation and conservatorship in the case and set the matter to be tried. This recommendation was adopted and made the order of the case on December 17, 1987, by Judge Bill Elliott, pursuant to the provisions of Section 54.011, Texas Gov't Code. (Appendix L)

On December 18, 1987, Michael Stocker, Esq., the attorney then representing Anne Shirley Holeman, filed an appeal of the order of December 17, 1987. That appeal was ordered to be heard before the 311th Judicial District Court on January 26, 1988.

However, without notice to Petitioner and without the opportunity to be heard, the appeal was in fact presented **ex parte** to Judge Bill Elliott on December 18, 1987. Even though no evidence was presented, and even though Judge Bill Elliott was aware that no notice of the proceeding had been given to Petitioner, Judge Bill Elliott proceeded to enter a new order which had the effect of establishing child support and altering the terms and conditions of visitation to the minor children of the marriage! This action was violative of the statutory procedure for appeals of master's reports, as set forth in Section 54.012, Texas Gov't Code. (Appendix M)

As of the order of December 17, 1987, Petitioner was under no obligation to pay any temporary support. On the very next day, without any notice to Petitioner, and without any evidence, Judge Bill Elliott signed an order setting temporary support. Petitioner was not served with either the motion or the order until approximately the end of February, 1988.

When Petitioner was apprised of the order of December 18, 1987, several months had passed and Petitioner was therefore in technical contempt of his support obligations, having paid nothing for support since December 17, 1987.

On March 9, 1988, Petitioner filed suit, pro se, in the United States District Court for the Southern District of Texas against Judge Bill Elliott. This suit sought, inter alia, injunctive relief against Judge Bill Elliott under Title 42 U.S.C. §1983 (Appendix F) and *Pulliam v. Allen*, 466 U.S. 522 (1984), to prevent further violations of Petitioner's constitutional rights.

On or about April 8, 1988, undersigned counsel, L.T. Bradt, entered his appearance in the state court proceedings as Petitioner's counsel. On or about April 11, 1988, undersigned counsel, L.T. Bradt, entered his appearance on Petitioner's behalf in the District Court.

On April 11, 1988, Petitioner sought to recuse Respondent in the state court proceedings because of his prior conduct and because of the pendency of the federal suit against Respondent. Acting in contravention of state law, Respondent denied that motion. In so acting, Respondent deprived himself of **all** jurisdiction to continue to act in the case and rendered all subsequent actions by him in the case, **void**.

During the month of May, 1988, Respondent had at least two other ex parte proceedings with Michael Stocker relating to this case, proceedings of which Petitioner and his counsel were given no notice and at which they had no opportunity to appear.

Thereafter, on or about June 1, 1988, Respondent heard a Motion for Contempt brought against Petitioner by his wife, which motion related in great part to the "order" of December 18, 1987. Petitioner again attempted to recuse Respondent from hearing the matter, especially the contempt, since he was a fact witness to how that illegal and void order was entered in violation of Petitioner's rights to notice, opportunity to be heard, etc.. Respondent denied that motion, again in violation of applicable state law, and proceeded to hear the contempt

against Petitioner. Respondent found Petitioner in contempt and sentenced him to confinement in the Harris County jail.

On the next day, having spent the night in jail without sleep since he was not completely booked in and had to spend the night in the jail holding cells; and without the opportunity to freshen up for trial - either to shave, shower or to change clothes — Petitioner was brought back from the jail to start his divorce trial. Petitioner cut quite a figure for the jury which was to decide the future of Petitioner, his children and his estate. Why, accused felons are afforded more rights than this!

During the trial of the divorce case, Respondent continued to demonstrate his prejudice against Petitioner and his counsel. This prejudice was demonstrated in numerous ways: Respondent ordered his bailiff to search Petitioner and his counsel's brief cases; Respondent allowed Stocker to impeach Petitioner with the finding of contempt; when during the trial undersigned counsel secured the admission from Petitioner's wife that both her affidavit in support of the Motion for Contempt and her testimony relating thereto were perjurious, Respondent refused Petitioner's motion for a finding of direct contempt or fraud on court against either Stocker or Mrs. Holeman; Respondent thereafter refused to allow Petitioner to impeach Mrs. Holeman with her admitted perjury; Respondent illegally incarcerated Petitioner's girl friend during the trial; and, when during the property portion of the case, Mrs. Holeman filed another perjurious affidavit and presented perjurious testimony, Respondent refused Petitioner's motion for a finding of direct contempt or fraud on court against either Stocker or Mrs. Holeman.

Respondent thereafter disregarded the jury's finding of fault in the divorce against Mrs. Holeman and entered a decree which completely went against Petitioner. The terms of the decree, when finally entered, contained onerous and punitive provisions concerning visitation, including provisions which had the effect of **forfeiting** visitation rights given to Petitioner, and which made Mrs. Holeman the prevailing party, as though she had had no fault in the divorce. The monetary sanctions imposed in the decree forced Petitioner into bankruptcy.

Respondent also sealed the divorce file, thereby denying Petitioner access to same for appellate or trial purposes. With one exception, every time that Petitioner has gone to get an order allowing Petitioner access to the file for the purposes of obtaining a certified copy of any document, Respondent has refused to sign the order.

ARGUMENT

QUESTION 1

DOES IT VIOLATE FIRST AND FOURTEENTH AMENDMENT RIGHTS FOR A STATE JUDGE TO HOLD EX PARTE PROCEEDINGS IN A PENDING CASE?

The right of access to the courts springs from the First Amendment. *Ryland v. Shapiro*, 708 F.2d 967, 971-972 (5th Cir. 1983).

> "... [t]he right to petition extends to all extends to all departments of the Government. The right of access to the courts is indeed but one aspect of the right of petition."

California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 510 (1972).

Since the conduct of Respondent which is complained of relates to his interference with Petitioner's right to petition for a divorce, this case necessarily involves abridgment of Petitioner's First, Fifth and Fourteenth Amendment rights.

Petitioner's case against Respondent for injunctive relief must be analyzed in context of Respondent's holding of ex parte proceedings and communications with opposing counsel, Michael Stocker. In so doing, Respondent violated Petitioner's fundamental constitutional rights under the First, Fifth and Fourteenth Amendments to the United States Constitution, to petition for the redress of grievances, to Due Process and to Equal Protection. Petitioner was forced to seek redress in state court to obtain a divorce. *Boddie, infra.* As stated therein —

> "... due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process **must be given a meaningful opportunity to be heard.** ...'[w]herever one is assailed in his person or his property, there he may defend.' ... 'there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be precedent by notice and opportunity for hearing appropriate to the nature of the case.'"

Boddie v. Connecticut, 401 U.S. 371, 377 - 378 (1971). [Emphasis supplied]

Stated another way —

> "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. ... It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.'"

Fuentes v. Shevin, 407 U.S. 67, 80 (1972).

> "The right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society. ... The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner."

Mathews v. Eldridge, 424 U.S. 319, 333 (1976).

From the foregoing authority, it is readily apparent that Respondent, Judge Bill Elliott, in holding ex parte proceedings during the course of a case, wherein custody, support and visitation were determined, without notice to Petitioner or the opportunity for Petitioner to be heard or present evidence, violated Petitioner's First Amendment rights to petition for redress of grievances and Petitioner's Fifth and

Fourteenth Amendment rights to Due Process.

QUESTION 2

DID THE TRIAL COURT ERR IN DISMISSING PETITIONER'S PRO SE COMPLAINT, WITHOUT AFFORDING PETITIONER AN OPPORTUNITY TO AMEND?

Petitioner's pro se complaint against Respondent was dismissed on Respondent's Motion to Dismiss. The law is well settled that —

> "[F]or the purposes of a Motion to Dismiss, the material allegations of the complaint are taken as admitted. ... And, the complaint is to be liberally construed in favor of Plaintiff. ... The complaint should not be dismissed unless it appears that Appellant could "prove no set of facts in support of his claim which would entitle him to relief.""

Jenkins v. McKeithen, 395 U.S. 411 (1969).

Stated another way, this Court is therefore bound to assume the truth of Petitioner's allegations. *Boddie v. Connecticut*, 401 U.S. 371, 373 (1971). And, since it was a §1983 complaint, it should not have been dismissed unless it appears that the Petitioner can prove no set of facts which would entitle him to relief. *Conley v. Gibson*, 355 U.S. 41 (1957).

Further, since this was a pro se complaint, the allegations must be read in a liberal fashion and they must be accepted as true in testing their sufficiency. *Haines v. Kerner*, 404 U.S. 519 (1972); *Cruz v. Beto*, 405 U.S. 319 (1972).

This Court should also note that the District Court dismissed this case without a hearing, which the Fifth Circuit has ruled is seldom appropriate when the defense of immunity is pled. *Slavin v. Curry*, 574 F.2d 1256, 1260 (5th Cir. 1978), modified, 583 F.2d 779.

QUESTION 3

MAY A STATE JUDGE BE SUED FOR INJUNCTIVE RELIEF UNDER TITLE 42 U.S.C. SECTION 1983 IF HE HOLDS EX PARTE PROCEEDINGS DURING THE COURSE OF A CASE?

In its Order of March 13, 1990, the district court held —

> "...Even if Judge Elliott held the alleged ex parte hearings in the course of family law proceedings, his actions would not have occurred in the absence of all jurisdiction. Thus, the judge is immune from Plaintiff's claim for damages. ... Nonetheless, Plaintiff's claim for injunctive relief must be dismissed for two reasons. First, 'there is a well established policy that federal courts should abstain from exercising jurisdiction in domestic relations cases.' ... Second, Plaintiff's claims are merely collateral attacks on the state court's judgment in the guise of a civil rights action. ..."

(Appendix B)

By this Order, it is apparent that the district court completely misunderstood the facts and law in this case.

First, this case must be analyzed in the context of the time at which the relief was sought. The district court recognized the authority of *Pulliam v. Allen*, 466 U.S. 522 (1984) to allow Petitioner to seek prospective injunctive relief, but then stated that Petitioner was launching a collateral attack on the divorce decree. The divorce decree was not entered until December 1, 1988. Is Petitioner to be blamed because the district court waited from the date of March 28, 1988 (the date on which the suit was filed in federal court) until March 13, 1990 to act on Respondent's Motion to Dismiss?

Petitioner does not make lightly the accusation that Judge Bill Elliott held ex parte proceedings with Michael A. Stocker in his divorce case. The accusation was made after Petitioner learned of the proceeding which had occurred on December 18, 1987, of which

Petitioner had no prior notice, no opportunity to be present or to adduce evidence, and at which no evidence was adduced, but suddenly Mrs. Holeman was again entitled to temporary support! If this does not fit the classic definition of an ex parte hearing, what does?

Respondent has attempted to get around the effect of the *Pulliam* case by arguing that there is no "case or controversy" within the requirement of Article III of the United States Constitution. This argument was accepted by the Fifth Circuit in its opinion.

Under this strained logic, Richmond Allen and Nicholson would have still had to have been in jail for the United States Supreme Court to grant injunctive relief against Gladys Pulliam. A careful reading of *Pulliam* reveals —

"Respondent Allen was arrested in January 1980 for allegedly using abusive and insulting language, a Class 3 misdemeanor ... Petitioner set a bond of $250. Respondent Allen was unable to post the bond and petitioner committed Allen to the Culpepper County jail, where he remained for 14 days. He was then tried, found guilty, fined and released. ...

Respondent Nicholson was incarcerated four times within the two month period immediately before and after the filing of Allen's complaint. His arrests were for alleged violations of Va. Code § 18.2-388 (1982), being drunk in public. Section 18.2-388 is a Class 4 misdemeanor for which the maximum penalty is a $100 fine. ... Like Allen, respondent Nicholson was incarcerated for periods of two to six days for failure to post bond. ...

The District Court found it to be petitioner's practice to require bond for nonincarcerable offenses. The court declared the practice to be a violation of due process and equal protection and enjoined it."

Pulliam v. Allen, 466 U.S. 522, 525 (1984).

There was clearly a "case or controversy" in *Pulliam* which would warrant review, even though Allen and Nicholson were free men at the time of the Supreme Court's decision. This is analogous to the instant case, because the 311th Judicial District Court remains the court of

continuing jurisdicuon over Appellant's case, even though Judge Bill Elliott has recused himself from the case as of October 25, 1990.

Since the record in this case clearly demonstrates that Judge Bill Elliott has a habit of holding such proceedings (c.f. December 18, 1987, May, 1988 and the signing of orders allowing Michael Stocker access to the sealed file but requiring Holeman to have a contested hearing with notice to Stocker to obtain the same relief - further evidence of ex parte proceedings), under the authority of *Pulliam*, Judge Bill Elliott can be prospectively enjoined from holding any further ex parte proceedings where notice is required. *Pulliam*, at p. 525.

Even if this Court holds that this case would otherwise be moot, applying the "capable of repetition yet evading review" exception to the mootness doctrine recognized by this Court in *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 515 (1911), this Court should grant review because the latter prong of the exception — that the controversy be sufficiently likely to be repeated — has been met herein in light of the history of dealings between the parties and the obvious penchant for Judge Bill Elliott to hold ex parte proceedings in violation of the First, Fifth and Fourteenth Amendments to the United States Constitution.

QUESTION 4

MAY A STATE JUDGE BE SUED FOR DAMAGES IF HE ACTS AGAINST A PARTY, WHEN BY STATE LAW, HE IS DEVOID OF ANY JURISDICTION AS A JUDGE?

The district court erred in holding that Judge Bill Elliott enjoyed judicial immunity for his conduct.

When presented with a motion to recuse, the judge has two options in Texas: recusal or referral. Tex. R. Civ. P. 18a(c). (Appendix N) Judge Bill Elliott did neither, choosing instead to purport to deny the motions. Having denied the Motion to Recuse, Judge Bill Elliott was without power to continue to hear the case and any orders made subsequent were void. As a result, Judge Bill Elliott was without any

jurisdiction to enter any orders in the pending case, to incarcerate Petitioner, much less to enter a severance of cases or to enter a divorce decree.

The law in Texas is clear and was clear when Judge Bill Elliott denied the motion to recuse him:

> "... a trial judge, when presented with a recusal motion, regardless of the "procedural sufficiency" of that motion, has only the option to act in one of two specified ways: to recuse himself, or refer the case to the presiding judge."

Greenberg, Benson, Fisk & Fiedler, P.C. v. Howell, 685 S.W.2d 694, 695 (Tex. Civ. App. - Dallas, no writ)

In a case very similar to the one at bar, a District Court judge denied the motion filed to recuse herself and did not refer the motion. The Dallas Court of Appeals held that —

> "... the trial court was without power to continue to hear this case, any orders made subsequent to the denial of the motion to recuse are **void**. The trial court was simply without power to continue, unless and until the referral order be decided in her favor."

Lamberti v. Tschoepe, 776 S.W.2d 651 (Tex. App. - Dallas, 1989) [Emphasis supplied]

From this authority, it is clear that Respondent, Judge Bill Elliott was without any jurisdiction to enter any orders in the pending case, to incarcerate Richard Harold Holeman, much less to enter a severance of cases or to enter a divorce decree.

As to Judge Bill Elliott's lack of jurisdiction —

> "... To give effect to the order of reinstatement because relator's attorney accepted benefits thereunder would vest jurisdiction in the trial court where none exists. The lack of

jurisdiction cannot be waived."

McGrew v. Heard, 779 S.W.2d 455 (Tex. App. - Houston [1st Dist.], 1989)

This Court's decisions state that —

> "No amount of judicial discretion of a court can supply a defect or want of jurisdiction in the case. The subject matter is not before it; the proceeding is **coram non judice** and void."

In re Winn, 213 U.S. 458, 466 (1909).

A judge lacks immunity where he acts in the clear absence of all jurisdiction. *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 351 (1872).

Being devoid of any jurisdiction to continue after being presented with the motion(s) to recuse, Judge Bill Elliott was also devoid of judicial immunity to a suit for damages resulting from his illegal conduct. The dismissal of Petitioner's suit on this basis was therefore error.

QUESTION 5

EVEN IF THERE IS AN ABSTENTION DOCTRINE IN FEDERAL COURT RELATING TO DOMESTIC RELATIONS CASES, MAY THE FEDERAL COURT ABSTAIN FROM GRANTING RELIEF FOR VIOLATIONS OF CIVIL AND CONSTITUTIONAL RIGHTS DURING THE COURSE OF A DIVORCE CASE WHEN THERE IS NO OTHER FORUM IN WHICH TO LITIGATE THE CLAIMS?

The District Court, in its order of March 13, 1990 (Appendix B), stated:

> "... First, 'there is a well established policy that federal courts should abstain from exercising jurisdiction in domestic relations cases.'"

citing *Daniels v. Stovall*, 660 F. Supp. 301, 304 (S.D. Tex. 1987) as authority for that proposition. A careful review of the cases on which *Daniels* relies, show that same do not require abstention in this case.

Petitioner's complaints against Respondent, Judge Bill Elliott, are that Respondent violated Petitioner's First, Fifth and Fourteenth Amendment rights by holding ex parte proceedings in which support, custody and visitation were established, without notice to Petitioner and without Petitioner having an opportunity to be heard therein; and, that when Respondent was devoid of any jurisdiction to proceed on the divorce case, Respondent incarcerated Petitioner on a contempt which Respondent himself later found to be void!

Petitioner's federal court case was thus a case which presented:

> "... no questions of custody or parental rights, no ... agreement to litigate in state court ... no threat that the former spouses will seek to play one court system off against the other," and no "strong state interest in the adjudication of this suit or any special competence on the part of the state courts."

Goins v. Goins, 777 F.2d 1059, 1061 (5th Cir. 1985).

Stated another way —

> "Under the 'domestic relations exception,' a federal court will not take jurisdiction over a case if that would require that it grant a divorce, determine alimony or support obligations, or resolve parental conflicts over the custody of children."

Bennett v. Bennett, 682 F.2d 1039, 1042 (5th Cir. 1982), citing *Ex parte Burrus*, 136 U.S. 586 (1890).

This Court must remember that this is a case wherein Petitioner has no other forum in which to litigate his claims against Respondent. Judge Bill Elliott is a state district court judge. Petitioner could not and cannot obtain an injunction from another state district court in Texas which would be effective against Judge Bill Elliott to prevent the

holding of ex parte proceedings since it would be an order from a court of equal - not greater - jurisdiction than that of Respondent.

Having no avenue of redress in state court, and surely not being the only person who has been subjected to these reprehensible violations of fundamental First, Fifth and Fourteenth Amendment rights, this Court must not turn a deaf ear to Petitioner's plight! As stated so succinctly by this Court:

> "Sheriffs, having eyes to see, see not; judges, having ears to hear, hear not; witnesses conceal the truth or falsify it; grand and petit juries act as if they might be accomplices . . . . [A]ll the apparatus and machinery of civil government, all the processes of justice, skulk away as if government and justice were crimes and feared detection. Among the most dangerous things an injured party can do is to appeal to justice."

Mitchum v. Foster, 407 U.S. 225, 241 (1972).

QUESTION 6

WAS PETITIONER DENIED A FAIR AND IMPARTIAL JUDGE IN VIOLATION OF THE FOURTEENTH AMENDMENT?

Petitioner was denied a fair and impartial tribunal in the person of Respondent.

> "We make it clear that we are not required to decide whether in fact Justice Embry was influenced, but only whether sitting on the case then before the Supreme Court of Alabama '**would offer a possible temptation to the average ... judge to ... lead him not to hold the balance nice, clear and true.' ... The Due Process Clause 'may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties.** But to perform its high function in the best way, justice must satisfy the appearance of justice."

Aetna Life Insurance Company v. Lavoie, 475 U.S. 813, 825 (1986) [Emphasis supplied]

> "... it certainly violates the Fourteenth Amendment ... to subject [a person's] liberty or property to the judgment of a court the judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in the case."

(Id., at page 1585) [Emphasis supplied]

Stated another way —

> "Petitioner is entitled to a neutral and detached judge in the first instant."

Ward v. Village of Monroeville, 409 U.S. 57, 61 (1972).

Respondent, Judge Bill Elliott could hardly have been called a "neutral and detached judge" when he incarcerated Petitioner for contempt for alleged violations of an order which was entered without notice to Petitioner, without an opportunity to him to be present and defend and which set support without any evidence and then based the proof of the alleged violations upon perjurious testimony of Anne Shirley Holeman! All the while acting against someone (Petitioner) who had had the audacity to sue Respondent, Judge Bill Elliott for this conduct!

CONCLUSION

From all of the foregoing, it is readily apparent that Petitioner's First, Fifth and Fourteenth Amendment rights were violated by Respondent, Judge Bill Elliott, in holding ex parte proceedings during the course of the Petitioner's divorce case. It is also readily apparent that the only forum in which these violations may be addressed is the United States District Court for the Southern District of Texas. For these reasons and those set forth hereinbefore, this Court should grant this Petition for Writ of Certiorari.

Respectfully submitted,

L.T. "BUTCH" BRADT
Lead Counsel for Petitioner
6303 Feldspar
Houston, Texas 77092-4716
(713) 681-2696
Fax: (713) 688-8212

MICHAEL LOUIS MINNS
10200 Old Katy Road, Suite 101
Houston, Texas 77043
(713) 461-5471
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Attorney for Petitioner

APPENDIX

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 90-2355
Summary Calendar

RICHARD HAROLD HOLEMAN,
Plaintiff-Appellant,

VERSUS

JUDGE BILL ELLIOTT,
Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
CA H 88 784

(February 20, 1991)

Before JOHNSON, SMITH, and WIENER, Circuit Judges.

PER CURIAM:[1]

Plaintiff Richard Holeman appeals the district court's dismissal of his action brought pursuant to 42 U.S.C. § 1983. Finding no error, we affirm.

[1] Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule,

I.

Holeman, acting pro se, brought his suit against Bill Elliott, a state district judge, in regard to Elliott's handling of Holeman's divorce proceedings, alleging that Elliott held ex parte meetings with opposing counsel and issued orders without notice to Holeman or an opportunity to be heard. Holeman requested actual damages and injunctive relief. Thereafter, an attorney appeared on behalf of Holeman.

Elliott moved to dismiss on several bases. Holeman moved to "Amend Pleadings, To Add Additional Defendants, and Request for Oral Hearing on Pending Motions." Without addressing the motion to amend, the district court granted Elliott's motion to dismiss, holding that (l) the doctrine of judicial immunity shields Elliott from damage claims; (2) Holeman's section 1983 claims are enmeshed in the underlying domestic relations controversy, which is a state, not federal, concern; and (3) Holeman's claim is a collateral attack on the state court's judgment.

Holeman timely filed a notice of appeal in forma pauperis (IFP) and a "Motion To Recognize Appeal in Forma Pauperis." The district court denied Holeman's appeal IFP, stating that Holeman had not filed the requisite affidavit detailing his inability to pay fees and costs pursuant to Fed. R. App. P. 24(a) or to offer any information as to his financial status. Holeman moved for a rehearing, resubmitting his original affidavit of inability to pay costs as well as a more complete affidavit of financial inability, in conformity with form 4 of the Fed. R. App. P. Appendix of Forms. The district court again denied Holeman's IFP motion but stated no reasons.

Holeman appeals, requesting (1) that the dismissal be overturned; (2) that his motion to amend and add additional defendants be granted; and (3) that the denial of his IFP motion be reversed. He now has paid the appellate filing fees. After this appeal was filed, Elliott granted Holeman's motion to recuse.

II.

A.

"For the purposes of a motion to dismiss, the material allegations

of the complaint are taken as admitted. And, the complaint is to be liberally construed in favor of Plaintiff. The complaint should not be dismissed unless it appears that Appellant could 'prove no set of facts in support of his claim which would entitle him to relief.'" Jenkins v. McKeithen, 395 U.S. 411, 421-22 (1969) (citations omitted). Holeman argues that the district court improperly dismissed his claim because (1) it is not a collateral attack on the divorce decree, but rather an allegation that Elliott violated Holeman's constitutional rights; (2) the violation is capable of repetition yet evading review, as the case is still pending in the same state court; and (3) Elliott is not protected by the doctrine of judicial immunity, since after he denied Holeman's motion to recuse he was acting entirely without jurisdiction.

Elliott argues that the district court's dismissal is appropriate because (1) money damages are barred by the eleventh amendment as a suit against the state; (2) there is no case or controversy presented by Holeman's claim for injunctive relief; (3) the federal court may not review state court proceedings; (4) federal courts must abstain from divorce proceedings; (5) both absolute and qualified immunity apply to Elliott's alleged actions; and (6) the claims are collateral attacks on a state court judgment.

Absolute judicial immunity shields Elliott from this action for damages. A judicial officer is absolutely immune from civil suits for damages resulting from any "judicial acts which are not performed in the clear absence of all jurisdiction." Adams v. McIlhany, 764 F.2d 294, 297 (5th Cir. 1985), cert. denied, 474 U.S. 1101 (1986). Accord McAfee v. Fifth Circuit Judges, 884 F.2d 221, 222 (5th Cir. 1989) (per curiam), cert. denied, 110 S. Ct. 1141 (1990). Elliott's actions in issuing orders, meeting with the parties, and making rulings in the case plainly fall within the "judicial action" criteria set out in Adams. "[T]hese are: (1) whether the precise act complained of is a normal judicial function; (2) whether the acts occurred in the courtroom or appropriate adjunct spaces such as the judge's chambers; (3) whether the controversy centered around a case pending before the court; and (4) whether the acts arose directly out of a visit to the judge in his official capacity." Adams, 764 F.2d at 297.

Further, a court's jurisdiction is to be construed broadly when immunity is the issue. Adams, id. at 299. "Where a court has some subject-matter jurisdiction, there is sufficient jurisdiction for immunity purposes." Id. at 298. Holeman does not contend that Elliott, as judge of the district court, did not have subject matter jurisdiction over the pending divorce action. Moreover, as Elliott has recused himself from the action, Holeman's request for injunctive relief is moot.

B.

Holeman also raises the issue of the district court's denial of his motion to amend his complaint and to add additional defendants. Holeman does not brief the issue, presenting no argument or citation of authority. Accordingly, the issue need not be considered. See Price v. Digital Equip. Corp., 846 F.2d 1026, 1027-28 (5th Cir. 1988).

C.

Holeman argues briefly and without citation of authority that the district court abused its discretion in denying him leave to appeal IFP. Because the appeal is to be decided against him, any error in not granting IFP is harmless. See 28 U.S.C. §2111. Even had Holeman been granted leave to appeal IFP, the affirmance of the judgment results in his being assessed fees and costs, see 28 U.S.C. § 1920, as the statute permitting leave to proceed IFP waives only prepayment of fees. See 28 U.S.C. § 1915(a).

AFFIRMED.

APPENDIX B

(Filed March 13, 1990)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RICHARD HAROLD HOLEMAN,
Plaintiff,
v.
JUDGE BILL ELLIOTT,
Defendant.

CIVIL ACTION NO. H-88-784

ORDER

Pending before this Court is the Motion to Dismiss of Defendant Judge Bill Elliott (Document #5). Having considered Defendant's motion and the submissions of the parties and the applicable law, the Court concludes that Defendant's motion should be, and hereby is, granted.

Facts

Plaintiff filed this action under 42 U.S.C. § 1983 seeking damages and injuntive relief against State District Judge Bill Elliott, Judge of the 311th Judicial District of Texas. The Court gleans from Plaintiff's complaint that Plaintiff was a litigant before Judge Elliott in a family law matter. Plaintiff asserts that Judge Elliott presided over ex parte hearings which resulted in the restriction of Plaintiff's child visitation rights. Accordingly, Plaintiff alleges that his due process rights were infringed. Plaintiff seeks actual damages and an injunction precluding Judge Elliott from holding future ex parte hearings in this matter.

Judge Elliott seeks dismissal on a number of grounds. In granting

dismissal, the Court need only address two: judicial immunity and abstention. Plaintiff asserts that Defendant deprived him of his constitutional rights by holding ex parte hearings. A judicial officer is absolutely immune from civil suits for damages resulting from any "judicial acts which are not performed in the clear absence of all jurisdiction." Adams v. McIlhany, 764 F.2d 294, 297 (5th Cir.), cert. denied, 474 U.S. 1101 (1986). Even if Judge Elliott held the alleged ex parte hearings in the course of family law proceedings, his actions would not have occurred in the absence of all jurisdiction. Thus, the judge is immune from Plaintiff's claim for damages.

The doctrine of judicial immunity does not, however, shield a judge from injunctive relief in a suit under section 1983. See Pulliam v. Allen, 466 U.S. 522, 542 (1984) ("judicial immunity is not a bar to prospective injunctive relief against a judicial officer acting in his judicial capacity"). Nonetheless, Plaintiff's claim for injunctive relief must be dismissed for two reasons. First, "there is a well established policy that federal courts should abstain from exercising jurisdiction in domestic relations cases." Daniels v. Stovall, 660 F. Supp. 301, 304 (S.D. Tex. 1987). Plaintiff argues a cause of action challenging the family court rulings that allegedly restricted his visitation rights. Plaintiff has not attacked the constitutionality of the rules or statutes governing the family court's procedures. See Phinizy v. State of Alabama, 847 F.2d 282, 284 (5th Cir. 1988) (attack on constitutionality of rules governing state court procedures might invoke federal court's jurisdiction). Instead, Plaintiff's claims against Judge Elliott are "enmeshed" in the underlying domestic relations controversy, which is a state - not federal - concern. See Phinizy, 847 F.2d at 284 (intertwining of constitutional claim with substance of probate court judgment deprives federal court of jurisdiction); Reed v. Terrell, 759 F.2d 472, 473-74 (5th Cir.) ("suit is 'inextricably intertwined' with state court award against the plaintiffs"), cert. denied, 474 U.S. 946 (1985).

Second, Plaintiff's claims are merely collateral attacks on the state court's judgment in the guise of a civil rights action. Plaintiff is, in essence, seeking a reversal in federal court of a state court judgment. This Court does not have jurisdiction to review the constitutionality of

a judgment redered in state court. See Reed, 759 F.2d at 473. Plaintiff's proper course of action is to appeal the family court's ruling through Texas state appellate courts to the United States Supreme Court. See Phinizy, 847 F.2d at 284. It is therefore ordered that Defendant's motion to dismiss be granted.

SIGNED at Houston, Texas, on this 8 day of March, 1990.

/s/ DAVID HITTNER
United States District Judge

APPENDIX C

(Filed March 13, 1990)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RICHARD HAROLD HOLEMAN,
Plaintiff,
v.
JUDGE BILL ELLIOTT,
Defendant.

CIVIL ACTION NO. H-88-784

FINAL JUDGMENT

As this Court has granted Defendant's motion to dismiss, it is hereby ordered that Plaintiff shall take nothing from Defendant and that each party shall bear his own costs.

This is a FINAL JUDGMENT.

SIGNED at Houston, Texas, on this 8 day of March, 1990.

/s/ DAVID HITTNER
United States District Judge

APPENDIX D

(Filed March 9, 1988)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS,
HOUSTON DIVISION

In Re:

RICHARD HAROLD HOLEMAN
Plaintiff
v.
JUDGE BILL ELLIOTT
Defendant

CIVIL ACTION NO. H-88-784

COMPLAINT AND SUIT FOR INJUNCTIVE RELIEF

1) Plaintiff is a citizen of the State of Texas.

2) Defendant is a citizen of the State of Texas and a resident of Texas and of this judicial district.

3) This action arises under USCS 1983, Title 42, and this Court has jurisdiction of the action under 28 USCS & 1331, 1332, and 1343.

4) At all times pertinent to this complaint, the Defendant, Judge Bill Elliott, was a family law presiding judge in the 311th Judicial District of Harris County, Texas, and in doing the acts and things herein set forth, said Defendant was an elected official of the State of Texas.

5) Plaintiff, who is a litigant in the 311th Judicial under Cause 85-39003, was deprived of his life, liberty, and property on several occasions by Judge Bill Elliott and Judge Bill Elliott did knowingly, wantfully, and tortiously hold ex parte hearings without Plaintiff

being present in a deeply contested case with multiple issues! Defendant held ex parte hearings on December 18, 1987 without Plaintiff present and again on February 11, 1988, with the intent to deprive Plaintiff his constitutional right to defend his interests and rights and deny Plaintiff the basic due process of law guaranteed by the Constitution of the United States of America.

6) Plaintiff alleges that as the direct consequences and result of Defendant's acts hereinabove complained of Plaintiff was deprived of liberty for visitation with the children, that Plaintiff was placed in jeopardy of incarceration by Judge Bill Elliott because of no notice of the above, Plaintiff was forced to defend himself in subsequent proceedings and in doing so lost tremendous amounts of time from his self employed business and experienced much anxiety from all the harassment from Defendant and opposing counsel, MICHAEL A. STOCKER, who is now threatening filing a Motion for Contempt arising from these illegal ex parte hearings that he and Judge Bill Elliott gave no notice of to Plaintiff!!!

7) Plaintiff asks this Court to enjoin Judge Bill Elliott from holding any more ex parte hearings pursuant to Case 85-39003 and to enjoin opposing counsel, MICHAEL A. STOCKER, from taking any more actions in this cause and that be disqualified from this case since he is a material witness and Defendant in the original tort suit!!!

WHEREFORE PREMISES CONSIDERED, Plaintiff claims actual damages as may be proven and prays that this Honorable Court correct this miscarriage of justice by an elected official, Judge Bill Elliott.

RESPECTFULLY SUBMITTED
/s/ RICHARD HAROLD HOLEMAN
4714 Palmetto
Bacliff, Texas 77518
(713) 669-0195

APPENDIX E

(Filed December 7, 1989)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RICHARD HAROLD HOLEMAN,
Plaintiff,
v.
JUDGE BILL ELLIOTT,
Defendant.

CIVIL ACTION NO. H-88-784

MOTION TO AMEND PLEADINGS, TO ADD ADDITIONAL DEFENDANTS, AND REQUEST FOR ORAL HEARING ON PENDING MOTIONS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, Richard Harold Holeman, and files this his Motion to Amend Pleadings and to Add Additional Defendants, wherein for grounds he would respectfully show as follows:

1. This suit was filed March 9, 1988, by Plaintiff acting pro se.

2. On or about March 28, 1988, Defendant, through his counsel, filed a motion to dismiss. That motion, although timely responded to, has not been ruled on by this Court, nor has this Court set same for hearing. This Court has also not ruled on the Motion for Sanctions which was filed at the same time against Judge Bill Elliott's attorneys, nor has same been set for hearing.

3. On or about April 7, 1988, in the proceedings pending in the 311th Judicial District Court, Plaintiff, through undersigned counsel, filed and presented a Motion to Recuse Defendant, Judge Bill Elliott. A

true and correct copy of the motion is attached hereto, marked Exhibt A and incorporated by reference for all intents and purposes. This motion was denied by Judge Bill Elliott without referring same to the Administrative Judge. A true and correct copy of that order is attached hereto, marked Exhibit B and incorporated by reference for all intents and purposes.

4. Thereafter, on or about May 31, 1988, Judge Bill Elliott held a contempt hearing in the divorce case involving Plaintiff, Richard Harold Holeman, and caused Richard Harold Holeman to be incarcerated. That contempt proceeding was brought by Anne Shirley Holeman and her attorney, Michael A. Stocker. The motion was predicated upon false affidavits and Anne Shirley Holeman offered perjured testimony in order to obtain Plaintiff's incarceration. After Plaintiff had been incarcerated and deprived of his liberty, Judge Bill Elliott found his order of contempt to have been void ab initio based upon the perjured testimony.

5. Thereafter, while totally lacking any jurisdiction, Judge Bill Elliott proceeded to "hear" the divorce, and entered a judgment which punished Plaintiff, deprived him of access or visitation to his children and assessed damages against Plaintiff. This judgment of damages, in the form of costs and attorney's fees has resulted in Plaintiff's bankruptcy.

6. As shown by the attached Memorandum of Points and Authorities, when Judge Bill Elliott denied the Motion to Recuse him from the divorce case, he acted without jurisdiction and all subsequent actions taken by him in the case were **void**. Thus, in incarcerating Richard Harold Holeman, and entering the divorce decreee against him, Judge Bill Elliott acted without any jurisdiction, the conduct was void, ab initio, and Judge Bill Elliot is without his cloak of judicial immunity in this case to protect him from a claim for damages resulting from this conduct.

7. Since this is conduct relating to the underlying suit, which occurred after the filing of the original complaint herein, this Court should permit the filing of an amended complaint herein.

CERTIFICATE OF CONSULTATION

8. I, the undersigned attorney, certify to the Court that I have attempted to contact the opposing counsel in this case, and have had no response to my telephone calls. Based upon that, I represent to this Court that this Motion is opposed.

REQUEST FOR ORAL HEARING

Plaintiff requests this Court to set this matter for oral hearing at the earliest possible opportunity so that this case may go forward.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Richard Harold Holeman prays that upon hearing this Court grant him leave to amend the pleadings in this case. Plaintiff prays for general relief.

Respectfully submitted,
/s/ L.T. BRADT #02841600
Attorney for Plaintiff
4216 Lockefield
Houston, Texas 77092-4701
(713) 681-2696

CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that a true and correct copy of the foregoing Motion was mailed, proper postage affixed, in a wrapper addressed to:

Robert L. Lemens
Assistant Attorney General
P.O. Box 12548
Austin, Texas 78711

on this 7th day of December, 1989.

/s/ L.T. Bradt

EXHIBIT A

IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
311TH JUDICIAL DISTRICT

(Filed April 7, 1988)

IN THE MATTER OF
THE MARRIAGE OF

RICHARD HAROLD HOLEMAN AND
ANNE SHIRLEY HOLEMAN

AND IN THE INTEREST OF
ROBERT DEFRIES HOLEMAN AND
ASHLEIGH NICOLE HOLEMAN,
MINOR CHILDREN

CIVIL ACTION NO. 85-39003

MOTION TO STRIKE TRIAL SETTING, MOTION TO REHEAR DISQUALIFICATION OF MICHAEL STOCKER, MOTION TO EXTEND TIME TO ANSWER INTERROGATORIES AND REQUEST FOR PRODUCTION, OBJECTIONS TO INTERROGATORIES AND REQUEST FOR PRODUCTION, MOTION TO STRIKE PLEADINGS, MOTION TO REHEAR MOTION TO CONSOLIDATE, MOTION TO REHEAR MOTION TO DISMISS, MOTION TO SET ASIDE SEVERANCE, MOTION TO APPOINT AD LITEM, MOTION FOR SOCIAL STUDY, MOTION FOR CONTINUANCE, MOTION TO REHEAR RECUSAL OF JUDGE BILL ELLIOTT AND MOTION FOR DEFAULT JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Richard Holeman, Petitioner, and files this his Motion, wherein, for grounds, he would respectfully show under the Court as follows:

I.

Petitioner moves to strike the trial setting of this case from April 18, 1988, for the following reasons: First, this case is ostensibly set preferentially for trial, based upon Respondent's Motion; however, no hearing on said motion was had, much less prior notice of any hearing being afforded to Petitioner. Second, Respondent's counsel did not certify, as required by local rules, that this case was ready for trial. Indeed, as can be seen from the plethora of discovery which is still pending, this case is not and cannot be ready for trial on April 18. Third, no ad litem has been appointed for the minor children in this case, nor has a social study been completed herein. For all of these reasons, this Court should strike the trial setting of this case from the week of April 18, 1988.

II.

Petitioner moves to rehear the disqualification of Respondent's counsel as not only has Michael Stocker been named as a Defendant in this case, Petitioner will call him at the trial both for the Divorce and of the tort action. The testimony to be elicited from Mr. Stocker includes, but is not limited to, the advice given by Mr. Stocker to the Respondent to deny Petitioner access to his children. Petitioner has competent evidence which will show the attorney-client privilege, even if applicable, has been waived by Respondent, therefore Mr. Stocker will have to testify to these matters. This testimony will be material to both parts of the case and will, in all probability, be detrimental to the interests of his client. This testimony will also go to the issue of reasonableness attorney fees being sought by Mr. Stocker. As this Court is well aware, the Disciplinary Rules, 5-101, 5-102, 7-101 and 7-102 require the disqualification of Mr. Stocker in this case. Failure to disqualify Mr. Stocker in this situation constitutes reversible error which will require a re-trial of this case.

III.

Petitioner moves to rehear and set aside the severance supposedly entered in this case. Undersigned counsel understands that this Court

has severed his tort actions against the Respondent, her attorney, and the other Defendants. However, undersigned counsel could find no indications that this Court has severed the tort action filed by Respondent. Failure to do so is an abuse of discretion on the part of this Court. In any event, both parties to the divorce have alleged dissipation of the community estate, fraud on the community estate, and tort actions that go directly to the relief to be granted in the divorce. Equity and judicial economy require this court to try the case as one instead of subjecting the parties to multiple trials on the same issues where the same testimony is going to be elicited. This Court should, therefore, set aside the severance previously ordered in this case.

IV.

This Court should rehear the Motion to consolidate and upon hearing should consolidate the case pending in the 11th District Court into this case. As can be seen from a review of the pleadings, the issues and the parties have already been raised in this case, this is the prior pending case and local rules require consolidation.

V.

This Court should rehear the motion to dismiss filed by petitioner with respect to the alienation of affection suit. Contrary to the requirements of the Rules of Civil Procedure, the Respondent did not seek nor obtain permission from this court to add third-party defendants, nor has she even attempted to obtain service, not even having requested the issuance of citation. Undersigned counsel does not represent the alleged alienator; however, there is no need to have something pending in this case which is not properly here, much less a matter that the Respondent has shown utter and total disregard for. Upon rehearing, this court should dismiss the Alienation of Affection suit.

VI.

Petitioner was served with Interrogatories and Request for Production on April 4, 1988, at 11:00 a.m.. This Court, either sua sponte, or on the oral motion of Michael Stocker pronounced that same were to be

fully complied with by 9:00 a.m. on April 8, 1988. Petitioner objects to this violation of the Rules of Civil Procedure, since he was entitled to at least three (3) days notice of a motion to shorten time in which to answer interogatories, as well as service of a written motion, which has never been filed. Petitioner also objects to interrogatory number one as not being a proper interrogatory and requesting matters not may not be inquired of in an interrogatory, specifically names and addresses of all persons having knowledge. Petitioner objects to interrogatory numbers three and four as not being proper interrogatories. Petitioner objects to interrogatory number eleven on the grounds that said information is privileged, and relates to the preparation of this case for trial by Petitioner. Petitioner objects to interrogatories number thirteen, fifteen and sixteen as same is privileged, relates to the investigation of this case and claim and the preparation for trial by Petitioner. Petitioner objects to request for production number 3.00 as being unclear what specifically is being requested. Petitioner objects to request numbers 3.01, 5.00 and 5.01 as being a trade secret and Petitioner should not be required to divulge same except after proper safe-guards are implemented by this Court to prevent dissemination of same or prevention of any abuse of said persons. Petitioner objects to request 9.03 on the grounds that Mr. Stocker has not returned the documents previously provided him relating to this same matter; and, Petitioner should not be required to produce any of these matters until the previously produced items are returned to Petitioner. Petitioner objects to request 14.00 on the grounds that this has previously been furnished to Respondent. Petitioner objects to requests 20.00 and 21.00 on the grounds that same are privileged, constitute work product and were prepared in preparation for trial. This Court should, upon hearing, sustain these objections and not require Petitioner to answer or produce these matters.

VII.

In the alternative, Petitioner cannot possible respond to these matters within the time allowed by this Court in its pronouncement and should, therefore, allow the Petitioner at least thirty days from the date of hearing to respond.

VIII.

Petitioner moves to strike the Respondent's pleadings herein and deny her the right to seek affirmative relief for failure to comply with this Court's prior orders relating to discovery, specifically the order of this Court of August 7, 1987.

IX.

Petitioner moves this Court to comply with the Family Code and appoint an attorney ad litem to represent the interests of the children herein.

X.

Petitioner moves this Court to order a social study in this case. None has been prepared and same is vital to the best interests of the children of this marriage.

XI.

Petitioner moves to rehear the motion to recuse the Honorable Judge of this Court. Petitioner would show that this Court has denied him Due Process in prior proceedings regarding this Court's recusal. Petitioner would further show that this Court cannot possibly grant him a fair and impartial trial since not only has Petitioner sued this Judge in United States District Court for violating his Civil Rights, but undersigned counsel has now entered his appearance in said case as Petitioner's counsel and is asking this Court to pay his attorney's fees therein. This Court should recuse itself from this case.

XII.

In the alternative, this Court should continue this case from the trial setting of April 18, 1988. This is Petitioner's first motion for continuance. This motion is not sought for the purposes of delay only but only so that justice may be done. Petitioner's counsel is unable to properly prepare this case for trial, having only been retained on April 4, 1988,

especially in light of all the discovery which needs to be completed in this case.

XIII.

Petitioner moves for default judgment against Harris & Stocker on the grounds that said partnership has entered a general appearance herein but has failed to properly put any matters into issue, even though served with citation herein. Petitioner is entitled to a default judgment against said defendant.

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that upon eharing this motion be, in all things, granted. Petitioner prays for general relief.

Respectfully submitted,
/s/ L.T. BRADT #02841600
Attorney for Richard Harold Holeman
4216 Lockefield
Houston, Texas 77092-4701
(713) 681-2696

APPROVED:

RICHARD HOLEMAN

AFFIDAVIT

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personsally appeared L.T. Bradt, who, upon his oath swore and deposed that he had read the foregoing pleading, that same is true and correct and within his personal knowledge, except where stated to be on information and belief, in which case he believes it to be true.

L.T. BRADT

SWORN TO AND SUBSCRIBED this 7th day of April, 1988.

NOTARY PUBLIC
FOR THE STATE OF TEXAS

MY COMMISSION EXPIRES:

NOTICE OF SETTING

The foregoing motion is set for hearing before the 311th Judicial District Court on April 11, 1988, at 9:00 o'clock a.m..

EXHIBIT B

IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
311TH JUDICIAL DISTRICT

(Filed April 11, 1988)

IN THE MATTER OF
THE MARRIAGE OF

RICHARD HAROLD HOLEMAN AND
ANNE SHIRLEY HOLEMAN

AND IN THE INTEREST OF
ROBERT DEFRIES HOLEMAN AND
ASHLEIGH NICOLE HOLEMAN,
MINOR CHILDREN

CIVIL ACTION NO. 85-39003

ORDER OF APRIL 11, 1988

On the 11th day of April, 1988, came on to be heard Motion to Strike Trial Setting, Motion to Rehear Disqualification of Michael Stocker, Motion to Extend Time to Answer Interrogatories and Request for Production, Motion to Strike Pleadings, Motion to Rehear Motion to Consolidate, Motion to Rehear Motion to Dismiss, Motion to Set Aside Severance, Motion to Appoint Ad Litem, Motion for Social Study, Motion for Continuance, Motion to Rehear Recusal of Judge Bill Elliott and Motion for Default Judgment, brought by the Movant, RICHARD HAROLD HOLEMAN.

Appearances

Movant, RICHARD HAROLD HOLEMAN, appeared in person and by and through his attorney of record, L. T. BRADT, and announced ready.

Respondent, ANNE SHIRLEY HOLEMAN, appeared not in person but by and through her attorney of record, MICHAEL A. STOCKER, who announced ready.

Also appearing was MARSHALL DAVIS BROWN, JR., on behalf of MICHAEL A. STOCKER, who announced ready.

The Court, after hearing the evidence and argument of counsel, entered the following Orders.

Motions Denied

IT IS ORDERED AND DECREED that the following Motions are in all respects denied, to wit:

Motion to Strike Trial Setting;
Motion to Rehear Disqualification of MICHAEL STOCKER;
Motion to Strike Pleadings;
Motion to Rehear Motion to Consolidate;
Motion to Rehear Motion to Dismiss;
Motion to Set Aside Severance;
Motion to Rehear Recusal of JUDGE BILL ELLIOTT; and
Motion for Default Judgment.

Continuance

IT IS ORDERED AND DECREED that the Motion for Continuance is granted, that the case is continued from its present setting of April 18, 1988, and further, the matter is preferentially set for trial on Monday, May 23, 1988.

Attorney ad Litem

IT IS ORDERED AND DECREED that the Motion to Appoint an Attorney ad Litem to represent the minor children the subject of this suit is granted, and taken under advisement at this time, with a person to be named at a later date.

Social Study

IT IS ORDERED AND DECREED that the Motion for Social Study is granted, and Harris County Family Court Services and any reciprocal agencies in the metropolitan Washington D.C. area are ORDERED, to the extent possible, to evaluate the parties in their respective homes and to file with the Court a written report of their findings concerning the custody issue and the children the subject of this suit, said report to be filed prior to the commencement of the trial of this cause.

Objections to Interrogatories

IT IS ORDERED AND DECREED that the Objections to Interrogatories are denied, and the Petitioner/Cross-Respondent, RICHARD HAROLD HOLEMAN, is ORDERED to answer fully, or supplement any prior answers if necessary, the following Interrogatories previously propounded by ANNE SHIRLEY HOLEMAN, and filed with the Court on or about March 31, 1988, to wit:

Interrogatory Number 1;
Interrogatory Number 10;
Interrogatory Number 11;
Interrogatory Number 13;
Interrogatory Number 15; and
Interrogatory Number 16.

Objections to Request for Production

IT IS ORDERED AND DECREED that the Objections to Request for Production are denied to the extent enumerated below, and the Petitioner/Cross-Respondent, RICHARD HAROLD HOLEMAN, is ORDERED to produce the following documents, things, and/or other matters as requested in the Request for Production filed by ANNE SHIRLEY HOLEMAN on or about March 31, 1988, to wit:

Item No. 2.01 - Checking Accounts;
Item No. 3.00 - Cash Flow;
Item No. 3.01 - Accounts Receivable;
Item No. 5.00 - Accounts Payable;
Item No. 9.03 - Sole Proprietorships; and

Item No. 20 - Copies of private investigator reports, tape recordings (including any transcriptions), letters, written memoranda, diaries, calendars and appointment books, video tape recordings, photographs or portraits that involve you, your spouse, your child, your businesses or any combination thereof.

Time to Answer Interrogatories and for Production

IT IS ORDERED AND DECREED that the Motion to Extent Time to Answer Interrogatories and Request for Production is granted, and all Interrogatories previously propounded and that may have been further ruled upon herein, are to be answered pursuant to the Texas Rules of Civil Procedure within twenty (20) days of this date, or on or before May 5, 1988, 5 p.m., with copies of the same forwarded to all counsel of record.

IT IS FURTHER ORDERED AND DECREED that all matters related to the Request for Production previously filed by ANNE SHIRLEY HOLEMAN on or about March 31, 1988, and other items as may have been ruled upon herein are to be produced pursuant to the Texas Rules of Civil Procedure at the law offices of MICHAEL A. STOCKER, 602 Sawyer, Suite 201, Houston, Texas, 77007, within twenty (20) days of this date, or on or before May 5, 1988, 5 p.m., 1988.

Miscellaneous

IT IS FURTHER ORDERED AND DECREED that pursuant to the Order of the Court dated August 7, 1987, within six (6) days of this date, MICHAEL A. STOCKER, Attorney of Record for ANNE SHIRLEY HOLEMAN, is to forward to counsel for RICHARD HAROLD HOLEMAN the most recent Inventory, Appraisement, and List of Claims filed herein on behalf of ANNE SHIRLEY HOLEMAN and further, any 1986 Tax Returns of ANNE SHIRLEY HOLEMAN, including all schedules and other attachments thereto.

SIGNED this 4 day of May, 1988.

/s/ BILL ELLIOTT
JUDGE PRESIDING

APPROVED AS TO FORM ONLY:

L. T. BRADT
ATTORNEY FOR PETITIONER,
RICHARD HAROLD HOLEMAN
4216 LOCKEFIELD
HOUSTON, TEXAS 77092-4701
(713) 681-2696
SB#02841600

/s/ MICHAEL A. STOCKER
ATTORNEY FOR RESPONDENT,
ANNE SHIRLEY HOLEMAN
602 SAWYER, SUITE 201
HOUSTON, TEXAS 77007
(713) 869-1646
SB#19257500

/s/ MARSHALL DAVIS BROWN, JR.
ATTORNEY FOR
MICHAEL A. STOCKER
3000 POST OAK BLVD., SUITE 1450
HOUSTON, TEXAS 77056
(713) 222-2500
SB#03153550

APPENDIX F

TITLE 42 U.S.C.

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

APPENDIX G

TITLE 28 U.S.C.

§ 1254. Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;...
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APPENDIX H

TITLE 28 U.S.C.

§ 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

APPENDIX I

U.S. CONSTITUTION

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

APPENDIX J

U.S. CONSTITUTION

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX K

U.S. CONSTITUTION

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX L

TEXAS GOVERNMENT CODE

§ 54.011. Judicial Action on Master's Report

After the master's report is filed, and unless the parties have filed a written notice of appeal to the referring court, the referring court may adopt, approve, or reject the master's report, hear further evidence, or recommit the matter for further proceedings as the referring court considers proper and necessary in the particular circumstances of the case.

APPENDIX M

TEXAS GOVERNMENT CODE

§ 54.012. Appeal to Referring Court

(a) Any party is entitled to a hearing by the judge of the referring court, if within three days, computed in the manner provided by Rule 4 of the Texas Rules of Civil Procedure, after the master gives the notice required in Subsection (b) of Section 54.010, an appeal of the master's report is filed with the referring court.

(b) The first day of the appeal time to the referring court begins on the day after the day on which the master gives the notice required in Subsection (b) of Section 54.010.

(c) The notice required under Subsection (b) of Section 54.010 may be given in open court or may be given by certified mail, return receipt requested. If the notice is given by certified mail, return receipt requested, the master shall certify the date of mailing and the notice is considered to have been given on the third day after the date of the mailing.

(d) All appeals to the referring court shall be in writing specifying the findings and conclusions of the master that are objected to and the appeal shall be limited to those findings and conclusions.

(e) On appeal to the referring court, the parties may present witnesses as in a hearing de novo on the issues raised in the appeal.

(f) Notice of any appeal to the referring court shall be given to opposing counsel pursuant to Rule 72 of the Texas Rules of Civil Procedure.

(g) If an appeal to the referring court is filed by a party, any other party may file an appeal to the referring court not later than the seventh day after the date the initial appeal was filed.

(h) The referring court, after notice to the parties, shall hold a hearing on all appeals not later than the 30th day after the date on which the initial appeal was filed with the referring court.

(i) Prior to any hearing before a master, the parties may waive the right of appeal to the referring court in writing or on the record.

(j) Failure to appeal to the referring court, by waiver or otherwise, a master's report that is approved by the referring court does not deprive any party of the right to appeal to or request other relief from a court of appeals or the supreme court. The date of the signing of an order or judgment by the referring court is the controlling date for the purposes of appeal to or request for other relief from a court of appeals or the supreme court.

APPENDIX N

TEXAS RULES OF CIVIL PROCEDURE

Rule 18a. Recusal or disqualification of judges

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(c) Prior to any further proceedings in the case, the judge shall either recuse himself or request the presiding judge of the administrative judicial district to assign a judge to hear such motion. If the judge recuses himself, he shall enter an order of recusal and request the presiding judge of the administrative judicial district to assign another judge to sit, and shall make no further orders and shall take no further action in the case except for good cause stated in the order in which such action is taken.

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